

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

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)	
Benjamin Edelman,)	
third-party complainant)	
)	
v.)	Docket DOT-OST-2021-0067
)	
Delta Air Lines)	
)	
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REPLY OF BENJAMIN EDELMAN

Comments with respect to this document should be addressed to:

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Dated: June 23, 2021

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1. Fourteen months after my request, Delta finally refunded the TSA fees it had previously collected from me. Delta says that refund moots this matter. But that refund does nothing to help the many passengers—by all indications, at least thousands, if not tens of thousands or hundreds of thousands—who similarly prepaid TSA fees, similarly did not travel, and are similarly entitled to a refund. To this day, Delta’s Contract of Carriage tells each and every Delta passenger that Delta “will not” refund those fees, even though governing law requires refunds when a passenger does not travel. The Department should demand better.

2. There is no dispute that the governing regulation, 49 CFR § 1510.9(b) requires an airline to refund a passenger’s TSA fee if the passenger does not travel. In this docket, Delta even admits as much. But how could a customer know? A passenger who reads Delta’s Contract of Carriage would necessarily conclude that no refund is available because Delta explicitly and unambiguously states that it “will not refund any

taxes ... collected upon nonrefundable tickets” (Rule 22.B.1). The Department may be prepared to let Delta be silent about customers’ refund rights.¹ But the Department ought not sit back while Delta states—in its official, governing contract with passengers—that it “will not” issue the refunds to which customers are indisputably entitled.

3. Delta tries to brush away the inconvenient provision of its own CoC by claiming that it “does not categorically deny the possibility of a passenger receiving a refund of prepaid TSA fees” (Answer p.3, internal quotation marks omitted) because, Delta says, its CoC “does not explicitly address the infrequent scenario” of a customer wanting a refund of the that fee (Id.). Department staff can read Delta’s CoC and judge for themselves. Contrary to Delta’s characterization, “Delta will not refund any taxes” is perfectly explicit, leaves zero doubt, and indicates no exceptions. The problem with that sentence is that it is impermissible and indeed unlawful, not that it is in any sense ambiguous.

4. Delta further attempts to deflect the Department’s attention by suggesting that the problem is limited to passengers who “booked a flight on Delta using award points” (Answer p.3). But my use of award points is irrelevant. Any passenger who booked a flight on Delta, whether an ordinary paid ticket or a redemption, is equally required to pay TSA fees—and under 1510.9(b), is equally entitled to a refund of those fees if the passenger does not travel.

¹ To be sure, others have criticized carriers’ failure to notify passengers of refunds to which they are entitled, and have suggested that greater steps are appropriate to make sure passengers receive those refunds. See the GAO’s Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees (GAO-10-785) which concluded: “consumers with unused nonrefundable tickets with expired or lost value are entitled to a full refund of the September 11th Security Fee, but *few consumers request a refund because airlines are not required to inform consumers of this*” (emphasis added).

5. The Department should do more to bring a proper resolution to this matter: Determine when Delta first imposed CoC provisions purporting to disallow refunds of TSA fees, require Delta to report how many passengers are eligible for such refunds under 1510.9(b), and devise a mechanism for all affected passengers to receive the refunds to which they are indisputably entitled. I reiterate my requests, first stated in paragraph 14(5)-(6) of my Complaint, that Delta refund all refundable TSA fees to all passengers, whether or not the passengers so request; that the Department require Delta to modify its CoC to acknowledge that such refunds are available; and that the Department require Delta not to impose a statute of limitations defense on any passenger seeking such refunds.

Respectfully submitted,
/s/
Benjamin Edelman

Certificate of Service

I hereby certify that I have, this 23rd day of June 2021 caused a copy of the foregoing Reply to be served by electronic mail on the following persons:

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/s/

Benjamin Edelman